

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of:

Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996

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CC Docket No. 96-98

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PETITION FOR RECONSIDERATION

Teresa Marrero
Senior Regulatory Counsel
Teleport Communications Group Inc.
Two Teleport Drive
Staten Island, NY 10311
(718) 355-2939

Of Counsel:

J. Manning Lee
Vice President, Regulatory Affairs

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SUMMARY

Teleport Communications Group Inc. ("TCG") requests that the Commission reconsider its findings in the Local Competition proceeding with respect to nondiscriminatory access to numbering resources. In its Second Report and Order, the Commission requires all local exchange carriers ("LECs") to provide competitors access to telephone numbers that is equal to the access the LEC provides itself. In the event of implementation of an NPA overlay, however, the assignment of NXX per existing area code does not satisfy the standard articulated in the Telecommunications Act of 1996 ("1996 Act") or the Commission's standards set forth in the Ameritech Order. Moreover, the requirement of the 1996 Act for nondiscriminatory access to numbering resources will be impossible to meet absent permanent number portability.

The minimum one-NXX assignment does not satisfy the nondiscriminatory access standards of the 1996 Act or the Ameritech Order standards, because this requirement favors wireless service providers over wireline carriers and does not facilitate competitive entry. Wireless providers may spread their NXX code assignment from the existing NPA over their entire service area; however, wireline carriers will only be able to provide service using an NXX block from the existing NPA in a single rate center. In areas with multiple rate centers, competitive LECs would be limited to serving only those customers located within the rate center from which the one NXX block had been issued. Such an outcome also fails to facilitate competitive entry, because the competitive LECs' service area in the

existing NPA will be limited. Customers wishing to select a competitive carrier will not be able to receive service using the existing area code, and competitive LECs will have number resources inferior to those enjoyed by the incumbent LECs in the existing NPA.

Similarly, NPA overlay plans in the absence of permanent number portability are anticompetitive. Overlay plans favor incumbent LECs as long as prospective competitive LEC customers are required to change area codes in order to change service providers. Interim number portability does not provide a satisfactory substitute for a permanent solution, because it results in a lower quality of service to competitive LEC subscribers, for example, in the form of longer call set-up times and the increased potential for call blocking. Therefore, permanent number portability is a necessity for competitive LECs to be able to provide their customers with service that is at least equal in quality to the incumbent LECs. At a minimum, the Commission should clarify that states may require permanent number portability for the implementation of number overlay plans within their jurisdiction.

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PETITION FOR RECONSIDERATION

Teleport Communications Group Inc. ("TCG") hereby petitions the Federal Communications Commission ("FCC" or "Commission") to reconsider certain aspects of its Local Competition Order issued in the above-captioned docket,¹ promulgating rules to implement certain parts of Section 251 of the Telecommunications Act of 1996 ("1996 Act").²

¹Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, (rel. August 8, 1996) ("Second Report and Order"), petition for review pending sub nom., Iowa Util. Board et al. v. FCC, No. 96-3321 and consolidated cases (8th Cir. filed Sept. 6, 1996).

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

I. INTRODUCTION

In its Local Competition Order, the Commission required *inter alia* that each local exchange carrier must provide dialing parity to its competitors and nondiscriminatory access to certain services. The Order also set parameters by which numbers must be administered and adopted minimum guidelines under which an NPA overlay may be implemented.

In creating the guidelines under which the nondiscriminatory access requirements set forth in Section 251(b)(3) of the Act should be carried out, the Commission asserted that such access, as used in Section 251(b)(3) of the Act, "encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC."³ The Commission asserted that such a definition "places more specific duties upon incumbent LECs in terms of nondiscriminatory access."⁴ The Commission concluded that nondiscriminatory access to telephone numbers "requires all LECs to permit competing providers access to telephone numbers that is *identical to the access the LEC provides to itself*."⁵

As detailed herein, however, the Commission's standards under which an NPA overlay plan can be adopted undercuts the Act's and the Commission's

³Second Report and Order at ¶12.

⁴Id. at ¶12.

⁵Id. at ¶12 (emphasis added).

mandate that access to numbers must be identical to the access the LEC provides to itself and fails to meet the three-part test set forth in the Commission's Ameritech Order.⁶ In addition, in declining to make permanent number portability a prerequisite for any NPA overlay, the Commission sets a foundation for creating an anticompetitive environment. The deficiencies inherent in an interim number portability solution will place competitive local exchange carriers at a disadvantage as compared to the incumbent LEC until a permanent solution is implemented.

For the reasons detailed herein, TCG requests that the Commission reconsider the standards under which an NPA overlay may be adopted. TCG recommends that the Commission require that NPA overlays may not be adopted unless competitive carriers have equal access to telephone numbers, as required under the Act and the Commission's Order, and a permanent number portability solution is implemented.

II. NEITHER THE FCC'S AMERITECH STANDARD FOR NPA OVERLAY IMPLEMENTATION NOR THE ACT'S REQUIREMENTS FOR EQUAL ACCESS TO NUMBERS CAN BE MET IF CARRIERS ARE MERELY ASSIGNED ONE NXX FOR THEIR ENTIRE SERVICE TERRITORY.

The Commission first set standards concerning the implementation of NPA overlays in its Ameritech Order. In that order, the Commission set forth national guidelines governing numbering administration, including the permissible use of overlay relief plans and established a three-part test for evaluating NPA overlays.

⁶Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596 (1995) ("Ameritech Order").

The Commission held that the administration of numbers (1) should facilitate competitive entry into the local exchange marketplace, (2) should not disadvantage any particular group of consumers, and (3) should not favor one technology over another.⁷ In support of its standard, the Commission explained that the administration of numbering resources “must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers.”⁸

The Second Report and Order clarifies that service-specific or technology-specific area code overlays are prohibited and concludes that all-service overlays can be implemented only if mandatory 10-digit local dialing is in place and if each authorized telecommunications provider is assigned at least one NXX in the existing area code 90-days prior to introducing the overlay.⁹ The Commission’s rationale for adopting the minimum one-NXX assignment requirement rests on its belief that by “[a]llowing every telecommunications carrier authorized to provide telephone exchange service, exchange access, or paging service in an area code to have at least one NXX in the existing NPA will also reduce the potential anti-competitive effect of an area code overlay.”¹⁰ The Commission also asserts that the requirement of one NXX assignment from the existing area code “would reduce

⁷Id. at 4604.

⁸Id.

⁹Second Report and Order at ¶286.

¹⁰Id. at ¶288.

the problems competitors face in giving their customers numbers drawn from only the new 'undesirable' area codes while the incumbent carriers continue to assign numbers in the 'desirable' old area code to their own customers."¹¹

The Commission clearly recognizes that incumbent LECs have an advantage over new entrants when a new code is about to be introduced "because they can warehouse NXXs in the old NPA."¹² TCG commends the Commission for recognizing the substantial competitive disadvantages faced by local exchange competitors under an overlay arrangement. What the Commission fails to recognize, however, is that, although one NXX may help wireless providers in that they may spread their NXX code assignment over their entire service area, wireline local exchange carriers do not have such an option. Throughout state commission proceedings addressing local exchange competition, the ILECs have advocated that CLECs must match traditional ILEC rate centers for competitive local exchange services and, indeed, this arrangement is in place today. Under the FCC's scenario, competitive LECs assigned one NXX code will be able to provide service using the existing area code in only *one* rate center. In large metropolitan areas comprised of multiple rate centers, the effect of the FCC's proposal is that competitive LECs cannot serve customers outside that one rate center using the existing area code.

¹¹Id. at ¶288.

¹²Id. at ¶289. Incumbent LECs also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers. Id.

Such a disparate arrangement clearly cuts against the Commission's goals in several respects. To begin with, an NXX assignment that limits the service territory within which the competitor can provide services using the existing NPA fails to meet the first and second prongs of the Ameritech Order. Because such a plan prohibits a competitive carrier from offering its services to customers outside the rate center to which the existing NPA-NXX is assigned, the standard fails to "facilitate competitive entry into the local exchange marketplace." In fact, such a standard severely limits competitive entry because it creates a low threshold by which NPA overlays can be approved without assuring that the plan facilitates competitive entry. Moreover, because incumbent LECs are privy to the substantial advantages of an overlay plan -- advantages that the Commission itself has recognized -- the adoption of an overlay plan whereby carriers cannot offer services to their entire service territory using the existing area code (while the incumbent LEC can) fails to meet the second prong of the Ameritech Order. CLEC customers outside a single rate center become a "disadvantaged group of customers" because they cannot receive services using the existing area code if they choose a competitive carrier.

Additionally, the one-NXX assignment prerequisite fails to meet the statutory requirement in Section 251(b)(3) of the Act that providers must have nondiscriminatory access to telephone numbers¹³ or the Commission's

¹³47 U.S.C. §251(b)(3).

implementation rules.¹⁴ Because competitive carriers could conceivably have only one NXX assigned to them from the existing NPA (with which they can only serve one rate center), while incumbent LECs can serve their entire service territory with NXXs from the existing NPA, competitive carriers would be deprived of their right to "access to telephone numbers that is identical to the access that the LEC provides to itself."¹⁵

TCG recognizes that the intent of the Commission was to foster competition and encourage a equitable distribution of NXXs from the existing area codes. However, because under the current structure, wireline competitive LECs can use one NXX code to serve only one rate center, the Commission's intended goal cannot be achieved. TCG recommends, therefore, that the Commission mandate that NPA overlays cannot be implemented unless each certificated carrier has sufficient NXXs from the existing NPA to serve its entire service territory.¹⁶ This requirement coupled with a prerequisite that permanent number portability be in place, as discussed below, will create competitively neutral guidelines by which NPA overlays can be implemented.

¹⁴Section 51.217 of the Commission's Rules which state that a LEC shall permit competing providers to have access to telephone number that is identical to the access that the LEC provides to itself. See 47 C.F.R. §51.217(c)(1).

¹⁵Id.

¹⁶TCG has submitted a proposal to the Commission that will permit the distribution of one NXX code over a maximum of ten rate centers. See Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering Plan Administration, NSD File No. 96-9 (filed July 12, 1996) at 19-23, currently pending before the Commission ("Petition for Competitively Neutral Guidelines").

III. THE COMMISSION MUST REQUIRE THAT PERMANENT NUMBER PORTABILITY BE A PREREQUISITE TO ADOPTION OF AN ALL-SERVICES OVERLAY PLAN.

In its Second Report and Order, the Commission required that before an all-services overlay plan may be implemented, mandatory 10-digit dialing must be deployed.¹⁷ The Commission did not require permanent number portability, however, finding that interim number portability would be sufficient to ameliorate the anticompetitive effects of an overlay plan.¹⁸ In addition, the Commission did not want to preempt state efforts to implement overlay plans in area codes facing exhaust.¹⁹ However, as discussed below, interim number portability arrangements do not sufficiently alleviate the anticompetitive affects of NPA overlay plans.

A. PERMANENT NUMBER PORTABILITY IS ESSENTIAL TO COMPETITIVE NEUTRALITY IN NUMBER ADMINISTRATION

The California Public Utilities Commission ("CPUC") has recently determined that an overlay plan can only satisfy the test of competitive neutrality if permanent number portability, in addition to mandatory 10-digit dialing, is in place to counter the inherent anticompetitive effects of such a plan.²⁰ The Commission found that

¹⁷The Commission also requires that an NXX block within the existing NPA must be made available to each service provider within the NPA. See Part II supra.

¹⁸Second Report and Order at ¶ 290.

¹⁹Id.

²⁰See Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Decision No. 96-08-028, 1996 Cal. PUC LEXIS 848 (August 2, 1996) ("CPUC Area Code Relief Policy Order").

the only way to ensure that an ILEC customer would not be required to change his or her area code upon switching service to a CLEC is to require permanent local number portability.²¹ Even the availability of a limited number of NXX blocks in the existing NPA is insufficient to ensure that all carriers would have enough codes prior to the implementation of permanent number portability. CLECs would still face "a disparity in the perceived value of the old versus the new area code."²² Without permanent number portability, the CPUC concluded, an overlay plan remains inherently discriminatory, and therefore, can only be implemented once permanent number portability is in place.

The fact that overlay plans — particularly in the absence of permanent number portability — favor incumbents is further reflected by ILEC efforts to promote such plans at every turn.²³ Indeed, the CPUC has imposed a geographic code split for the 310 area code, in part, because permanent number portability would not be available in sufficient time to place CLECs on par with ILECs.²⁴ Moreover, without permanent service provider local number portability, few

²¹Id. at *34-*35.

²²Id. at *34.

²³See Petition for Competitively Neutral Guidelines at 7-14.

²⁴AirTouch Communications v. Pacific Bell, Case 94-09-058 at 52-55 (August 11, 1995) ("CPUC Order"). Similarly, the Maryland Public Service Commission ("MPSC") has concluded that "a long term number portability solution should be pursued to afford Maryland citizens the maximum level of choice and services available through a competitive market" (MPSC Comments at 6), and in conjunction with its efforts to address this issue, it has approved an all-services overlay relief plan.

consumers would want to switch providers because they would be assigned a number in the overlay NPA. Consumers' lack of willingness to try a new carrier solely on the basis of number assignment will represent a barrier to entry for new local exchange carriers. As the FCC itself asserted in its Number Portability Order, "[permanent] number portability is essential to ensure meaningful competition in the provision of local exchange services,' and currently feasible means of providing interim portability could impair 'the quality, reliability, and convenience of telecommunications services' offered by new entrants in local markets."²⁵

B. INTERIM NUMBER PORTABILITY DOES NOT CURE THE ANTICOMPETITIVE FEATURES OF AN OVERLAY PLAN

Interim number portability will disadvantage customers who may have to give up their current numbers or accept lower quality service. Commenters in the Telephone Number Portability proceeding recognized the disadvantages to interim number portability, including "longer call set-up times, incumbent access to competitors' proprietary information, complicated resolution of customer complaints, increased potential for call blocking, and substantial costs to new entrants."²⁶ Furthermore, as the CPUC similarly concluded, interim number portability is not a suitable solution due to the "increased risk of premature code

²⁵Telephone Number Portability, CC Docket 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286 (rel. July 2, 1996) at ¶¶ 28, 110.

²⁶Id. at ¶ 104.

exhaustion due to the double assignment of numbers for remote call forwarding."²⁷ The CPUC cited in this regard call transmission degradation, loss of some CLASS features, simultaneous call limitations to individual members, problematic 911 routing, operator services impact, and potential billing confusion.²⁸

Overlay relief plans are anticompetitive, unless subject to strict conditions. Thus, mandatory 10-digit dialing, as required by the Second Report and Order,²⁹ does not adequately address the anticompetitive effects of an overlay; permanent service provider number portability where consumers retain their area code and 7-digit dialing number is needed to mitigate effectively the important anticompetitive aspects of an overlay. Simply put, the deficiencies of an overlay plan cannot be sufficiently ameliorated by any measures in the absence of permanent number portability. Permanent number portability is a necessity for CLECs to be able to provide their customers with service that is at least equal in quality to the ILECs, especially in the event of pending NPA exhaust.³⁰

²⁷Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Decision No. 96-08-028, 1996 Cal. PUC LEXIS 848, *35-*36 (August 2, 1996).

²⁸Id. at *36.

²⁹Second Report and Order at ¶ 286.

³⁰TCG believes that an essential part of permanent number portability is the ability to port any unused numbers from an assigned NXX block, as customer needs may require, to the local exchange carrier selected by the customer to provide local service. For example, a business customer that needs to add lines should be able to do so from the same NXX block from which numbers are already assigned, regardless of whether the customer has switched carriers, if the numbers

C. STATES MUST HAVE THE FLEXIBILITY TO REQUIRE PERMANENT NUMBER PORTABILITY AS A CONDITION TO THE IMPLEMENTATION OF AN OVERLAY PLAN

If the Commission declines to address this permanent number portability issue, however, it should clarify that it is within the discretion of state commissions to impose a permanent number portability requirement. Such a finding would be consistent with the Commission's concern that requiring permanent number portability as a prerequisite to implementation of an overlay plan would deny state commissions the opportunity to implement an all-services overlay plan to address area code exhaust.³¹ Clearly, the Commission is concerned that a state commission be left with the flexibility to implement plans that best suit the numbering conditions of its particular state. Flexibility to assess the appropriate number relief plan in California, for example, resulted in a balanced decision to require permanent number portability as a condition to an overlay plan. By clarifying that state commissions may require permanent number portability, this Commission would permit states to assess on an individual basis the feasibility of number portability implementation along with the status of number availability.


are available. Thus, if a customer places a bona fide request with a competitive carrier, that carrier should be allowed to port the numbers from the carrier originally assigned the entire NXX code.

³¹Second Report and Order at ¶ 290.

IV. CONCLUSION

For the reasons stated herein, TCG urges the Commission to prohibit anticompetitive NPA overlay plans and require that NPA overlays cannot be implemented without mandatory 10-digit dialing and permanent number portability. In addition, any NPA overlay plan must assure that competitive providers have equal access to numbers, including equal access to NXXs from the existing NPA.

Respectfully submitted,



Teresa Marrero, Esq.
Senior Regulatory Counsel
Teleport Communications Group Inc.
Two Teleport Drive
Staten Island, New York 10311
718-355-2939

Of Counsel:

J. Manning Lee
Vice President, Regulatory Affairs

October 7, 1996

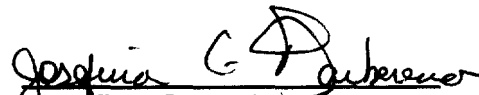
CERTIFICATE OF SERVICE

I, Josefina C. Barberena, hereby certify that a copy of the foregoing Petition for Reconsideration was delivered by hand on October 7, 1996 to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

International Transcription Services
2100 M Street, N.W., Suite 140
Washington, D.C. 20037


Josefina C. Barberena